



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,711	02/05/2002	Darryl Costin JR.	F-Manuf/TL/SCH	6461
23844	7590	11/24/2003		
SCOTT C HARRIS P O BOX 927649 SAN DIEGO, CA 92192			EXAMINER NERBUN, PETER P	
			ART UNIT	PAPER NUMBER
			3765	
			DATE MAILED: 11/24/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/683,711

Applicant(s)

COSTIN ET AL.

Examiner

Peter P Nerbun

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 7-12 and 44-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 13, 14, 16-19, 22, 25-37, 42 and 43 is/are rejected.
- 7) ☒ Claim(s) 6, 15, 20, 21, 23, 24 and 38-41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 April 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The drawings are objected to in accordance with 37 CFR 1.84(b), for containing black and white photographs in Figures 3-8. Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (e.g., immunological, western, Southern, and northern), auto- radiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. In the instant application the subject matter of the application does admit of illustration by a drawing since the parameter screens and patterns may be illustrated by a draftsman in a series of mechanical drawings.

The drawings are further objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the textile roll recited in claims 1-6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Art Unit: 3765

The disclosure is objected to for containing errors in grammar and syntax. For example, on page 2, paragraph [0006], line 4, "an output patterns are" should be changed to --output patterns--; on page 3, paragraph [0007], line 8, "thepattern" should be changed to --the pattern--; on page 3, paragraph [0009], lines 3 and 5, "women"s" and "men"s" should be changed to -- women's" and "men's--; on page 4, last line, "preventthe" should be changed to --prevent the--; on page 6, lines 5 and 6, "drawingsoftware" should be changed to --drawing software--.

Claims 14, 24, 29, and 35 are objected to for containing grammatical errors. In claim 14, line 3, "a" should be deleted. In claim 24, line 4, "parts" should be changed to --part--. In claim 29, line 3, "the desired" should be changed to --a desired--. In claim 35, line 2, "into" should be changed to --in--.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25, 29, and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 25, lines 1-2, applicant recites "said defining a pattern comprises defining boundary powers for said pattern which are reduced at edges of the pattern". The meaning of this recitation is unclear. How is a pattern defined by "boundary powers" that are "reduced at edges of the pattern"? The specification does not appear to clarify this matter since the only mention of a "boundary power" occurs on page 5, lines 1-2 where applicant states that the "low boundary power keeps the patterns from visibly overlapping when combined together". The same

Art Unit: 3765

comment applies to claim 43. Clarification is necessary if claims 25 and 43 are not cancelled in response to this Office action. No new matter may be added. In claim 29, line 3, applicant recites "wherein will be in the final garment". Neither claim 29 nor the disclosure recites what will be in the final garment in the context of the recited claim language.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Costin (U.S.P. 5,990,444). The patent to Costin discloses a method comprising using a computer 205, Fig. 40 to form a pattern 212 on only a part of a total textile roll 209, the textile roll having a width that is sufficient to enable forming an entire garment from the roll and using a laser 201, 203, 206, 207 to form said pattern on said roll.

Claims 1-3, 13, 18, 19, and 26-29, insofar as definite, are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al (U.S.P. 6,002,099). The patent to Martin et al discloses a method comprising using a computer ("Numerical Control Computer", Fig. 10C) to form a pattern (see the oval portions on the pants legs in Fig. 10C) on only a part of a total textile roll, (the textile roll formed by the cylindrical portions of the pants garment that each constitute roll portions as shown in Fig. 10C) having a width that is sufficient to enable forming an entire garment from the roll and using a laser 1030 to form said pattern on said roll. With regard to claim 13, note that the laser

Art Unit: 3765

1030 forms the pattern on the material in a single pass across the material (see col. 14, lines 46-49). With regard to claims 18 and 19 note the fractal type pattern shown in Fig. 6A. With regard to claim 26, note that the oval pattern is formed on a plurality of separated pieces since a plurality of pants are moved along the motorized carrier shown in Fig. 10C. Each one of these pants constitutes a separated piece on which an oval pattern is formed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,5,13,14,17,25,30,32, and 43, insofar as definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Costin (U.S.P. 5,990,444). With respect to claim 4 it would have been obvious to one of ordinary skill that the range of widths of roll 209 could be chosen as 60 inches or greater since applicant has presented no evidence of the criticality of this claimed range. In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969). The same comment applies to claims 14 and 30. With regard to claim 5 it would have been deemed obvious to one of ordinary skill that a plurality of parts are cut from the roll 209 of Costin after finishing the pattern since the various patterns 212 are to each other in terms of shape and texture. Therefore they must belong to separate garment parts which must be cut from the roll in order to function as separate parts. With regard to claim 13 it would have been deemed obvious that the laser may form a pattern in a single pass since the mirrors 206 form a part of the laser since they

Art Unit: 3765

direct the laser beam while moving to form the pattern. These mirrors may move in a single pass to form a particular pattern.

Claims 14,16,22,30-37,42, and 43, insofar as definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al (U.S.P. 6,002,099). With respect to claims 14, 22, and 30 it would have been obvious to one of ordinary skill that the range of width over which the pattern may be formed may be chosen to be 60 inches or more since applicant has presented no evidence of the criticality of this claimed range. In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969).

Claims 6,15,20,21,23,24, and 38-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7-12, and 44-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P Nerbun whose telephone number is 703-308-0955. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-308-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-

Application/Control Number: 09/683,711

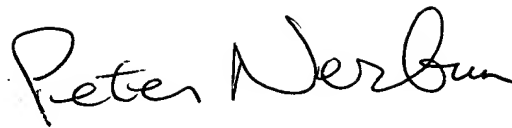
Page 7

Art Unit: 3765

0861.

Peter Nerbun

November 19, 2003

A handwritten signature in black ink that reads "Peter Nerbun". The signature is written in a cursive style with a large, looped "P" and a trailing flourish at the end.

Peter Nerbun
Primary Examiner